

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WEST BEND MUTUAL INSURANCE)
COMPANY)

Plaintiff,)

-vs-

PROCACCIO PAINTING & DRYWALL)
COMPANY, INC.)

Defendant.)

Case No.: 12-CV-06425

Hon. Blanche M. Manning, Presiding
Hon. Michael T. Mason, Magistrate Judge

**MOTION FOR SUMMARY JUDGMENT AS TO
COUNT II OF WEST BEND'S COMPLAINT AND
COUNTS I, II, III AND IV OF PROCACCIO'S COUNTERCLAIM**

Defendant/Counter Plaintiff Procaccio Painting & Drywall Company, Inc. ("Procaccio") by and through its attorneys, moves for summary judgment pursuant to Fed.R.Civ.P. 56 as to Count II of the complaint for declaratory judgment¹ of Plaintiff West Bend Mutual Insurance Company ("West Bend") and Counts I, II, III and IV of Procaccio's Counterclaim. In support of this motion, Procaccio submits its Local Rule Statement of Undisputed Facts, the Affidavit of Doris Procaccio and its Memorandum of Law.

WHEREFORE, Defendant/Counter Plaintiff Procaccio Painting & Drywall Company, Inc. respectfully requests the entry of a judgment in its favor and against Plaintiff/Counter Defendant West Bend Mutual Insurance Company and awarding the following relief:

- i. A premium refund in the amount of \$259,933.00;
- ii. Costs, disbursements and prejudgment and post-judgment interest as authorized by law; and

¹ Count I of West Bend's Complaint is the subject of Procaccio's Motion To Dismiss, which is fully briefed.

iii. Such other relief as the Court deems just and equitable.

Dated: September 26, 2012

Respectfully submitted,

By: /s/ Charles L. Philbrick

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CERTIFICATE OF SERVICE

I, Charles L. Philbrick, an attorney, certify that I served a true and correct copy of the foregoing Motion For Summary Judgment on September 27, 2012 via electronic mail and regular

U.S. Mail upon:

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/s/ Charles L. Philbrick
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